IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1845 OF 2007
IN
SUIT NO. 1242 OF 2005

Ramesh Pahilaj Shroff ..Plaintiff
V/s.
Harish Purshottam Shroff & Anr. ..Defendants.

Mr. Indu Prakash i/b L.K.Tirpathi for the Plaintiff.
Mr.A.M. Tripathi for Defendant No.1.

CORAM : A.A. SAYED,J.
DATE : 24TH OCTOBER, 2007

P.C.
. This notice of motion has been taken out to set aside the order dated 16th April, 2007, dismissing Notice of Motion No. 2829 of 2005 and for restoration. The learned Counsel for the plaintiff submits that on 16th April, 2007 the matters, including the above matter were transferred from the Court of Hon'ble Mr. Justice D.K. Deshmukh to the Court of Hon'ble Mr. Justice D.G.Karnik and he was not aware about the said transfer and after enquiry he went to the Court of Hon'ble Mr. Justice D.G. Karnik, but by that time the matter was called out and dismissed for non prosecution.

2. The defendants have not filed any reply to this notice of motion. The learned Counsel for defendant No.1 has opposed the notice of motion. He

submits that the timings mentioned in paras 2 and 4 of the affidavit in support of notice of motion are inconsistent and hence the story of the plaintiff cannot be relied upon. The learned Counsel for the plaintiff has explained this by submitting that it is a typing error.

3. Sufficient cause is shown by the plaintiff to restore the Notice of Motion and the notice of motion is required to be restored to the file in the interest of justice, subject however, to the costs, to be paid by the plaintiff to defendant No.1.

4. Order dated 16th April, 2007, dismissing the Notice of Motion No. 2829/2005 is set aside and the said notice of motion is restored to the file subject to the cost of Rs.1000/- to be paid by the plaintiff to the defendant No.1, within two weeks. Payment of cost is a condition precedent. Notice of Motion No.2829/2005 to come before regular Court for hearing.

5. Notice of motion is disposed of in terms aforesaid.

(A.A. SAYED, J.)